



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Washington Patrol Service, Inc.

File: B-228180

Date: September 30, 1987

DIGEST

Protest of alleged improprieties in a solicitation and of agency's failure to allow adequate time for bidders to respond to clarifying amendment is dismissed as untimely where not filed until well after bid opening, where not only were alleged improprieties apparent but from circumstances it should have been apparent to protester in sufficient time to protest prior to bid opening that little time would be available to respond to the amendment.

DECISION

Washington Patrol Service, Inc., has protested the conduct of a procurement for security guard services under invitation for bids (IFB) No. DLA005-87-B-0001, issued by the Defense Logistics Agency's depot at Tracy, California. The protester maintains that the agency amended the solicitation without affording prospective bidders adequate time to respond and failed to clarify certain aspects of the solicitation essential to its pricing.

We dismiss the protest as untimely filed.

This solicitation was for the provision of security guard services at the Defense Contract Administration Services regional office in Los Angeles for 1 year beginning October 1, 1987, with two 1-year options. The IFB was issued on July 17, 1987, and set the time of bid opening at 2 p.m. on Thursday, September 3, 1987, almost 7 weeks later. According to the Secretary-Treasurer of the protester, which is the incumbent contractor for these services, while "pricing out" the firm's bid in time "to put [it] into the mail before the 2:30 p.m. deadline for delivery to [the contracting agency]," several "questions and concerns" about the IFB occurred to her and about which she telephoned the contracting officer. According to a supplemental submission

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by the protester^{1/} these concerns each so affected price that it was unable to complete and return the bid absent clarification. We think a fair summarization of the protester's concerns is:

1. May a guard supervisor also "work a post?"
2. Does the wearing of government-furnished sleeve patches conflict with a 1985 California statute which requires guards who wear a badge to also wear arm patches reading "private security" and bearing the name of the private patrol company?
3. Does the requirement that the contractor's employees submit to a personnel security interview, in conjunction with the use of arm patches not bearing the contractor's name, create a prohibited personal services contract?
4. Is not the requirement that certain items of apparel be woolen inappropriate to the climate and for wear in a building which is not air conditioned on weekends?

According to the protester, at the time of its call, the contracting officer was not available and it was told it would be contacted the following day.

On the morning of Wednesday, September 2--the day before the scheduled bid opening--the protester by telephone went over its "concerns" with a representative of the contracting officer. At mid-day, the contracting officer advised the protester that bid opening was being delayed. The following day, Thursday, September 3, the protester received a telegram from the contracting agency which stated that an amendment was forthcoming to clarify portions of the statement of work and that bid opening was extended until [Wednesday,] September 9 at 2 p.m.

According to the protester, nothing further occurred during the ensuing 4 days--Friday, September 4 through Monday, September 7 [Labor Day]. On Tuesday, September 8 it received a copy of the IFB amendment which it considered of

^{1/} The initial protest was supplemented by a detailed statement mailed 9 calendar days later. Our Bid Protest Regulations require the initial filing to contain the "detailed statement," 4 C.F.R. § 21.1(c)(4) (1987), and do not permit the "supplementation" of a protest as the protester attempted here.

"no help" because it did not respond to, or did not adequately clarify, the concerns which the protester had raised. Nevertheless, the protester submitted its bid. On September 11, 2 days after bid opening, the contracting officer called the protester to advise it that its bid had been received late and would not be considered for award. On that day, the protester prepared simultaneous letters of protest to the contracting officer and to our Office. We received the letter addressed to us on September 15, almost a week after bids had been opened and after the protester knew its bid had been rejected as late.

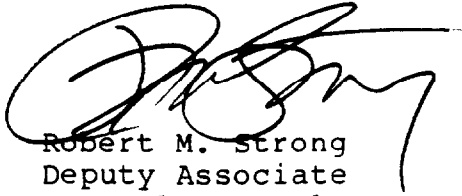
The protester does not contest the contracting agency's determination that its bid was late. It does contend, as we indicated above, that the contracting agency issued an amendment which did not adequately clarify the solicitation and did not allow bidders sufficient time to respond to the amendment.

Our Bid Protest Regulations require that protests based on alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(2). Both bases of this protest fall within this rule and because the protest was not filed with us until almost a week after bid opening, the protest is dismissed as untimely.

The protester states that not until 1 to 2 days prior to the originally scheduled bid opening date did it discover certain "questions" or "concerns" about the solicitation allegedly so significant that even as the incumbent contractor, it could not price its bid unless they were clarified. It knew as of Thursday, September 3, that an amendment was "forthcoming to clarify portions of [the] statement of work" and that bid opening had been postponed only until Wednesday, September 9. In the midst of September 3-9 was a weekend followed by a Monday which was Labor Day, a federal holiday. The protester had no assurance the amendment would satisfactorily address all of its concerns and it should have been self-evident, especially in view of the interviewing 3-day weekend, that little time would remain between receipt of the amendment and the time set for opening of bids. These facts should have been apparent to the protester as of September 3, some 6 calendar days prior to bid opening, adequate time for it to file a protest either with the contracting officer or

with our Office concerning these alleged improprieties. It did not file a protest at that time, however, not doing so until well after bid opening and with the knowledge that its bid was not under consideration for award as it was received late.

The protest is dismissed.



Robert M. Strong
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General Counsel